

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 25, 2005

GSBCA 16679-RELO

In the Matter of THOMAS M. STAN

Thomas M. Stan, Marietta, OH, Claimant.

Paul Henne, Acting Assistant Director – Business Management and Operations, Fish and Wildlife Service, Washington, DC, appearing for Department of the Interior.

DANIELS, Board Judge (Chairman).

An agency which incurs relocation expenses on behalf of an employee who accepts a transfer, but does not complete it as planned, may recover the expenses from the employee unless the employee declined the transfer for a reason which the agency reasonably determines was beyond his control.

Background

Thomas M. Stan is an employee of the Department of the Army in Marietta, Ohio. In 2003, the Department of the Interior's Fish and Wildlife Service (FWS) offered him a position in its Arcata, California, office. Mr. Stan accepted the offer. On June 13, he signed a service agreement in which he "agree[d] to remain in the Federal Government Service for 12 months following the effective date of transfer in consideration of payment by the Federal Government of relocation expenses." The agreement provided:

In the event that I fail to remain in the Federal Government Service for a period of 12 months following the effective date of my transfer, unless separated for reasons beyond my control and acceptable to the Service, I will

repay the Service the total of any costs incurred and any excess amounts paid as a travel advance or withholding tax allowance as a result of this relocation.

Mr. Stan and his wife took a househunting trip to California, beginning on June 23. FWS allowed him to use the services of a relocation services contractor, Prudential Relocation, Inc., and Prudential Relocation began to provide those services on June 26.

According to the service agreement, Mr. Stan was to begin work with FWS on or about July 13. He asked FWS to postpone the start date to July 27, however, and on July 11, the agency agreed to his request. On July 24, Mr. Stan asked that the start date be postponed again. He explained:

I am currently experiencing a great amount of turmoil in my personal life which is interfering with my anticipated relocation. This is compounded by the fact that it took almost a month to get Prudential rolling on my house. It would be necessary for me to return 23-AUG-2003 to conclude my business and deal with the movers. It would place a financial burden on me to do this and also require me to use two weeks annual leave. I wish you would extend my starting date until 24-AUG-2003 if at all possible so I could accept the position.

FWS refused this request. The Service explains, "He had personal reasons (i.e., turmoil in personal life) that were not accepted by this agency." On July 29, Mr. Stan wrote to FWS, "Please be advised that circumstances will not permit me to accept the . . . position . . . due to the fact that I am unable to start employment prior to 25-AUG-2003." According to Mr. Stan, "The agency offered to waive my PSC [sic – probably should be PCS, for permanent change of station] expenses if I would notify the agency that I declined to accept the position."

Nearly a year and a half later, on December 9, 2004, FWS sent to Mr. Stan a notice disallowing a claim in the amount of \$1189.52. The agency also said that it would send him a bill of collection in the amount of \$4153.28, representing costs that it had paid in connection with his planned transfer to FWS's Arcata office. Such a bill was issued on December 15. It has two components, \$1994.28 in airfare for the househunting trip taken by Mr. Stan and his wife and \$2159 in charges paid to Prudential Relocation. FWS has included in the record proof that it actually spent \$1994.28 on airfare for the Stans. The agency has also provided an invoice it received from Prudential Relocation. While that invoice shows a balance due of \$2159, it includes only two items, both pertaining to inspections of the Stans' Ohio house, and the total for those items is \$524.

On March 1, 2005, FWS sent to Mr. Stan a memorandum entitled, “Outstanding Travel Advance Balance.” This memorandum shows “advances paid to traveler,” \$2363; “outstanding balance,” \$1189.52; and “total due,” \$1189.52. Mr. Stan writes, regarding this document, “A Travel Voucher was submitted for \$1,189.52 and the unused portion was repaid.”

FWS now asks that the Board approve its request that Mr. Stan “pay the debt of \$4,153.28 and the travel advance of \$1,189.52.”

Discussion

Should an agency recover the costs of relocation benefits it has paid to or for the benefit of an employee if the employee does not complete a transfer as expected? In requiring that an employee sign a service agreement before relocating, Congress has addressed through statute one situation in which this question might arise: the employee actually transfers to a new duty station, but leaves government service within twelve months of the move. In those circumstances, “unless [the employee was] separated for reasons beyond his control that are acceptable to the agency, . . . the money spent by the Government for the expenses and allowances is recoverable from the employee as a debt due the Government.” 5 U.S.C. § 5724(i) (2000).

Mr. Stan signed a service agreement, and he and the agency focus on it in debating whether the agency may recover from him the relocation benefits it provided for his planned move – househunting expenses and charges imposed by a relocation services contractor. The service agreement concerns only the situation in which an employee transfers but leaves government service within twelve months of the move, however, and Mr. Stan never transferred yet remained in government service. The existence of the service agreement therefore is not relevant to a resolution of this case.

What should be done in situations like Mr. Stan’s, in which an agency provides relocation benefits to or on behalf of an employee it expects to transfer, but the employee does not relocate? Neither statute nor regulation addresses these circumstances. The Board, and the General Accounting Office before it, have adapted to them the statutory rule for employees who transfer but soon thereafter leave Government service: the agency should recover the money unless the employee was precluded from completing the transfer by a reason beyond his control which was acceptable to the agency. *Thomas W. Burt*, GSBCA 14537-RELO, 98-2 BCA ¶ 29,751 (citing *Murrel C. Hoage*, 63 Comp. Gen. 187 (1984); *Richard J. Hughes*, B-197816 (June 24, 1981); *William C. Moorehead*, 56 Comp. Gen. 606

(1977))¹; *see also* *Alan R. Brooks*, GSBCA 15193-RELO, 02-1 BCA ¶ 31,749; *Marilyn Zekunde*, GSBCA 15317-RELO, 00-2 BCA ¶ 31,008.

In cases involving an employee's violation of a service agreement, we have held that because the determination of whether a reason is beyond the employee's control and acceptable to the agency is a matter within the discretion of the agency, we will overturn an agency's determination only if it does not have a reasonable basis. *Melinda K. Kitchens*, GSBCA 16639-RELO (Aug. 23, 2005); *Amy Oestreich*, GSBCA 16489-RELO, 05-1 BCA ¶ 32,852 (2004). We have applied this standard in assessing an agency's determination on the same issue in cases involving an employee's failure to transfer at all. Where the failure to transfer was caused by the agency itself, the reason for the transfer not occurring was clearly beyond the employee's control and acceptable to the Government. Relocation expenses the employee incurred in anticipation of the transfer and before the agency's action were therefore reimbursable. *Beverly J. Koenig*, GSBCA 15911-RELO, 02-2 BCA ¶ 31,994 (agency canceled transfer); *Jeffrey Meyer*, GSBCA 14138-RELO, 98-1 BCA ¶ 29,597 (agency left employee in limbo between assignments after transferring him to a position for which he was not qualified). Where the failure to transfer was not attributable to either the agency or the employee, but the reason for it was clearly beyond the employee's control, relocation expenses incurred before it occurred were similarly reimbursable. *Mrs. Jack Kimbrough*, GSBCA 13908-RELO, 97-2 BCA ¶ 29,041 (employee died before transfer could be completed) (citing *Guriqbal S. Nat*, B-248698 (Sept. 18, 1992)). Where the failure to transfer was attributable to factors closer to the employee's control than the agency's, however, we have upheld agency determinations that the reason was not acceptable and that the employee would consequently have to absorb costs the agency had incurred for his relocation. *Brooks* (employee declined transfer to accept another, better-paying position); *Zekunde* (same); *Burt* (employee declined transfer because he thought suitable housing was unavailable at the new station).

¹ The *Burt* decision and the General Accounting Office decisions cited in it applied a Federal Travel Regulation (FTR) provision which contained the same rule and was restricted to househunting expenses. *See* 41 CFR 302-4.3(a) (1996). This provision was deleted from the FTR without explanation in 1997, when the part of the regulation concerning househunting trips was rewritten into a question-and-answer format. 62 Fed. Reg. 13,768 (Mar. 21, 1997). We believe that the rule we follow here remains a faithful interpretation of the statutes governing relocation benefits, that the FTR provision in question merely enunciated that rule with regard to one class of benefits, and that the deletion of the provision did not effect a change in the law.

Mr. Stan's given reason for deciding not to transfer was principally that he was "experiencing a great amount of turmoil in [his] personal life." In light of the vagueness of this justification and the fact that the employee had accepted the deadline for transfer, imposed by the agency at his request, just two weeks earlier, we consider that FWS had a rational basis for determining that the reason, even if beyond Mr. Stan's control, was not acceptable. We therefore hold that the agency may recover all relocation expenses it incurred on his behalf.

We are concerned, however, that FWS has not properly documented the amount of money it spent on Mr. Stan's behalf – and therefore, the amount of money it is entitled to recover from him. The agency has demanded that Mr. Stan pay it \$5342.80 – \$1994.28 in airfare for the househunting trip, \$2159 in charges by a relocation services contractor, and \$1189.52 in a travel advance. The documentation submitted to the Board, however, supports a claim for only \$2518.28 – the airfare and \$524 in charges by the relocation services contractor. We have no evidence that the remainder of the charges imposed by that contractor had anything to do with services relevant to sale of the Stan residence. The nature of the \$1189.52 is confusing; we do not understand whether the agency gave the employee a travel advance in this (or any other) amount, whether Mr. Stan has already repaid some of a travel advance, or whether Mr. Stan has alleged that he incurred certain expenses on the househunting trip and is seeking reimbursement for them. The papers provided by FWS and the comments made by Mr. Stan raise questions instead of providing answers. Unless FWS can produce documentation of additional costs it incurred on Mr. Stan's behalf, we would object to any demand by the agency that the employee pay it more than \$2518.28.

Both the agency and the employee mention the possibility of FWS's waiving collection of whatever amount of debt Mr. Stan owes. We do not consider whether FWS should waive the debt or not. That is a matter for determination by the agency itself, to be made in accordance with its own regulations. *Jack N. Goldstein*, GSBCA 16647-RELO (Aug. 18, 2005); *Grover M. Pegg*, GSBCA 16118-RELO, 04-1 BCA ¶ 32,587; *Alexander J. Qatsha*, GSBCA 15494-RELO, 01-1 BCA ¶ 31,364. If as Mr. Stan alleges, FWS actually promised not to collect from him any moneys due, it may wish to consider this in making a decision as to waiver.

STEPHEN M. DANIELS
Board Judge